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Committee on the Judiciary's
Subcommittee on Crime, Terrorism, and Homeland Security**

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Good morning Chairman Scott, Ranking Member Gohmert, and members of the House Judiciary Committee's Subcommittee on Crime, Terrorism, and Homeland Security. Thank you for inviting me here today to testify at this oversight hearing on the Office of Justice Programs and the Office of Juvenile Justice and Delinquency Prevention (OJJDP).

My name is Shay Bilchik and I am the Founder and Director of the Center for Juvenile Justice Reform at the Georgetown University Public Policy Institute. Prior to my current position, I served as President and CEO of the Child Welfare League of America, the oldest and largest association of agencies that directly help abused, neglected, and otherwise vulnerable children and their families. Prior to my tenure at CWLA, I served as the Administrator of the Office of Juvenile Justice and Delinquency Prevention ("OJJDP") at the U.S. Department of Justice.

Background

OJJDP is the agency established by the Juvenile Justice and Delinquency Prevention Act of 1974 (JJDPA) to lead the effort to address the public safety issues of juvenile justice and child and youth victimization. In place since 1974, OJJDP is one of several offices under the Office of Justice Programs (OJP) within the U.S. Department of Justice (DOJ). Let me begin by noting

that the focus of my testimony today will be on those youth¹ whose behavior has brought them to the attention of the justice system and not on children and youth who are victims of abuse, neglect, or exploitation. While OJJDP has a significant role in preventing and ameliorating child and youth victimization, and has maintained an effective focus on this area, that focus has not been adequately maintained on issues related to juvenile delinquency, including efforts to prevent the involvement of youth in the juvenile justice system. Unfortunately, this drift in OJJDP's focus comes at a critically important juncture for the juvenile justice field and an opportunity to drive juvenile crime to lower levels is being lost.

First, the good news: today, youth crime and delinquency in the United States remain near the lowest levels seen in the past three decades.² In addition, youth commit only a small portion of the nation's crime.³ These numbers are contrary to the dire predictions of many "experts," whose ominous warnings of a coming generation of "super-predators" shocked many state legislators into abandoning the core principles that have guided juvenile justice systems across the country for the last century. Those principles, separating delinquent juveniles from hardened criminals, treating youth as developmentally different from adults, and viewing young people as being inherently malleable and subject to positive change in a rehabilitative setting, are still fundamentally sound.

In addition, in the past decade we have learned a tremendous amount about what works to prevent and reduce juvenile delinquency. From the growing body of research on the development of the adolescent brain, to knowledge of effective, evidence-based programs and practices, we now know significantly more about what works in turning these young lives around

¹ The term "youth" is used in this testimony to describe an individual under the chronological age of 18 years.

² Recent data show a dramatic reduction in the rate and seriousness of juvenile delinquency over the past ten to twelve years with juvenile arrests dropping a staggering 24%.

³ According to the FBI, youth under age 18 accounted for only 15.4% of all arrests.

and correcting their behavior than we did a decade ago. Additionally, we have increasingly recognized the importance of evaluating programs in order to enhance their effectiveness and foster replication, and ensure that programs that don't work are no longer funded.

While we celebrate these significant and positive developments, the juvenile justice field also faces urgent challenges, such as the over-reliance on detention and incarceration as a response to juvenile crime; the continued detention of status offenders despite federal prohibitions; pervasive racial disparities in the justice system; and the increased placement of children at risk of abuse, sexual assault and suicide in adult jails, despite the JJDP's intent to recognize the difference between youth and adults involved in the justice system. Every year, juvenile courts handle an estimated 1.6 million delinquency cases and the daily census of youth under age 18 who are incarcerated is 97,000. Many of these confined youth have committed non-violent offenses and are highly amenable to the benefits of rehabilitative services and supports provided in non-institutional home and community-based settings. Additionally, some researchers estimate as many as 200,000 youth have their cases processed in adult criminal court each year. As a result of increased prosecution of youth in adult criminal courts in the states, the number of youth in adult jails has increased so that, on any given day, an estimated 7,500 youth under the age of 18 are inmates in adult jails. This data represents both the lost opportunity to build on the gains described above and the adoption of policies that according to the Centers for Disease Control and Prevention and OJJDP have actually contributed to increases in crime.

In my testimony today, I will highlight six main areas of improvement that OJJDP should pursue: 1) realigning the agency's focus to the JJDP and its core protections, 2) focusing on assistance to States, 3) restoring the comprehensive nature of the agency, 4) engaging the

juvenile justice field, 5) increasing transparency, and 6) developing the juvenile justice workforce.

Realigning the Agency's Focus to the JJDPA and its Core Protections

OJJDP was originally created by the JJDPA, which was first passed in 1974 and most recently reauthorized in 2002. The purpose of the JJDPA, as outlined in the legislation, is to assist State and local governments in preventing and encouraging accountability for juvenile delinquency, as well as addressing juvenile delinquency by providing “technical assistance, research, training, evaluation, and the dissemination of information on effective programs for combating juvenile delinquency.”

These purposes are carried out through several grant programs to States overseen by the Administrator. Under Title II of the JJDPA, each State receives formula grant money to support activity undertaken pursuant to the JJDPA and to comply with its four core protections - jail removal, sight and sound separation, disproportionate minority contact, and the deinstitutionalization of status offenders. If States are not in compliance with any one of the four core protections, a portion of the federal funding they receive can be withheld. In order to ensure the appropriate distribution of these federal funds, OJJDP monitors the States' compliance with the core protections.

The focus of the JJDPA was intended to highlight issues facing youth who are at risk for becoming involved in or already involved in the juvenile justice system. Recognizing the difference between youth and adults, the JJDPA also created OJJDP as a separate agency to deal with issues facing youth involved in the juvenile justice system. Although the focus of the JJDPA is on the four core protections mentioned above, it also establishes OJJDP as the lead

federal agency on issues being confronted by the juvenile justice field. These include, for example, providing guidance on research-based programs to prevent delinquency, conditions of confinement in juvenile facilities, combating substance abuse, and identifying and redirecting youth with mental health disorders to appropriate agencies.

The current OJJDP has shown some focus on these types of issues. For example, in the next several weeks, an OJJDP grantee is holding a think tank to evaluate establishing a national recidivism measure. Unfortunately, over the past eight years, there has generally been a decreased level of activity and information from OJJDP in this regard, including the amount of research created by the Agency and the number of conferences and convenings focused on juvenile justice issues. This lack of activity has been particularly concentrated around issues surrounding the JJDPA and its implementation.

As I believe any Administrator must do, OJJDP has chosen to focus on certain issues facing the juvenile justice field more than others. This prioritization is only natural given the Administrator's wide range of responsibilities. However, OJJDP has shifted away from its core mission as established by the JJDPA to such a significant degree that it has effectively disengaged from the field it is charged with serving. OJJDP needs to refocus the efforts of the office on youth at risk of becoming involved, or already involved in the juvenile justice system, and the core protections provided under the JJDPA.

Focusing on Assistance to States

One of OJJDP's major duties is to partner with the States in implementing the various provisions under the JJDPA. In addition to the broader support and engagement of the juvenile justice field I address below, OJJDP does this in two ways.

First, OJJDP is to work with States to come into compliance with the JJDPA's core requirements. This process is to include 1) regularly updating regulations through a rule-making process designed to obtain feedback from States and other interested parties on specific implementation issues, 2) providing States with an updated compliance guide with practical, specific information on what the Act's provisions mean for States, 3) training individuals in State agencies to implement the Act, and 4) providing specific assistance and policy models to States to overcome State barriers to implementing certain portions of the Act.

With regard to these duties, OJJDP's efforts have been less than fully effective. First, although OJJDP recently updated its compliance guide, neither the compliance guide nor the agency's regulations include provisions on the most recent legislative iteration of the Disproportionate Minority Contact core protection, which was last updated in 2002. Second, there seems to be a diminished capacity within OJJDP to work with the States to train individuals and help guide State compliance efforts. Finally, OJJDP has issued major policy changes in executive memos that do not abide by federal rule-making standards. For example, OJJDP recently issued guidance on changes as to who could be considered an adult inmate, which restricted States from keeping youth convicted in adult court in juvenile facilities up to the State's permitted extended age of juvenile jurisdiction. This guidance came to States in memo form and gave States three years to comply, yet there was no public notice or dialogue between the agency and the States.

OJJDP's second duty related to the JJDPA is to work with the States to ensure they remain in compliance with the JJDPA. In this light, OJJDP should be partnering and working closely with the States to ensure that compliance monitors are in place in each State with the capacity to effectively determine the State's compliance with the conditions placed on receiving

juvenile justice funding – and address problems as they arise. This need for compliance is especially important for the youth served by the JJDP. For example, the jail removal core protection requires that youth in the juvenile justice system be kept out of adult jails and lock-ups except in very narrow circumstances. One of the reasons for this provision is that youth are 36 times more likely to commit suicide in an adult jail than in a juvenile detention facility, particularly when they first arrive at an adult facility.

OJJDP should also be clear and timely in informing States when they are out of compliance with the Act. Unfortunately, in this realm, OJJDP again falls short in assisting States. Compliance monitors are currently required to visit sites or facilities that fall under the JJDP at least once every three years, but are not required to monitor each facility or site every three years. This pattern can, and does, result in a nine-year gap between visits to a particular facility - the time for a youth to go from age 10 to 19. Additionally, it is not always clear - either to States or to the public - which States are or are not in compliance with the JJDP and which States are meeting de minimus requirements or going above and beyond the requirements listed in the Act. Finally, OJJDP has in two ways been inconsistent in determining whether States are in compliance with the Act. First, the responsibility for determining State's compliance has been changed frequently. Second, as these staff changes have taken place, the criteria used and how the compliance determination is made, has also changed. This has left some States in the difficult situation of making a good-faith effort to comply with the Act, but having to meet changing standards of what constitutes compliance.

Some of the difficulties OJJDP has experienced in helping States comply with the Act stem from a lack of resources. In the last 7 seven years, federal juvenile justice funding has decreased by 60% and the OJJDP operating budget has been reduced 90% - from \$7 million in

FY01 to only \$700,000 in FY08. This decrease in juvenile justice appropriations is a major concern, but its impact has been exacerbated by OJJDP not directing a more significant portion of its remaining resources towards the compliance needs of the States. I would strongly urge OJJDP to more actively partner with the States around compliance issues and make providing support to the States as they work to implement the provisions of the JJDP Act a more significant priority – and request the appropriations it needs to fulfill the purposes of the Act.

Restoring the Comprehensive Nature of the Agency

As the sole federal agency providing leadership in the juvenile justice arena, it is critical that OJJDP have the capacity to provide a full range of services needed to carry out the roles discussed above. This requires that OJJDP be able to perform a comprehensive set of functions, including conducting research and gathering data, identifying and disseminating best practices and relevant information, leading demonstration projects, providing training and technical assistance, and promoting the expansion of effective practices in the field. Empowering OJJDP with the ability to perform these functions is essential within an organizational entity as diverse in focus as those found within DOJ as a whole.

However, in recent years OJJDP has declined in both capacity and stature. The Agency has experienced a dismantling of its functions over the past eight years, along with a significant decline in both staff and funding levels. This change has been reflected in many of the areas in which OJJDP formerly had expertise being moved to other agencies within OJP. For example, much of the research previously conducted by OJJDP is now conducted by the National Institute of Justice. The juvenile justice field expressed great concern to OJJDP and OJP about this

change. That concern has proven to be well founded, as it has resulted in a less robust and targeted effort to develop new knowledge and disseminate new research findings to the field.

Finally, the past several Presidential budgets have called for the consolidation and significant reduction of funding for juvenile justice programs supported by the federal government. If enacted, this approach would create a single, discretionary grant program providing less support to the states and local communities than currently provided. This is yet another example of how the current OJJDP has turned away from both the young people and the field it was created to serve. This consolidated grant program would also take money from specific grant programs designed to address a range of critical, but specific issues and allow these grants to be distributed for use in targeting a wide variety of issues. This goes directly against the authorization and creation of these specific grant programs, which were designed to address specifically identified juvenile justice issues of importance to the juvenile justice field.

I encourage both Congress and the Department of Justice to work to restore the comprehensive nature of the agency, including investing significant resources to bolster expertise and knowledge in the agency itself. This investment would help to solve many of the issues identified above by reinvigorating the office and rebuilding the capacity that established OJJDP in previous years as a pre-eminent federal agency — one well equipped to serve juvenile justice stakeholders and the public.

Engaging the Juvenile Justice Field

An additional area of concern is OJJDP's apparent unwillingness to actively engage the field and juvenile justice stakeholders across the nation. When I refer to the juvenile justice field, I am referring to a broad range of groups, including youth, parents, families, advocates,

researchers, policymakers, practitioners, and State and local governments, including State legislatures and Governor's offices. The open and honest engagement with each of the groups is critically important — not only to promote forward movement in the juvenile justice community, but also to help develop expertise and align and formulate priorities at the federal level.

This type of engagement has not taken place under the current Administration. While OJJDP has reached out to certain groups within the juvenile justice field, this outreach has been too narrow in nature. In essence, the current Administration has redefined the juvenile justice field in such a limited way, that much of it has been excluded from the work of the office. For example, OJJDP frequently formulates positions and priorities at the federal level without consulting with this more broadly defined field. As a result, individuals or groups with significant expertise in the field who have opposing views or differing priorities do not have input into these decisions and the opportunity for OJJDP to make fully informed decisions is lost.

In addition, over the past several years, OJJDP has limited interaction with the juvenile justice field through the grant-making process. Under the prior Administration, grants from OJJDP frequently went to knowledgeable and well respected content experts in the juvenile justice field. These organizations were entrusted to provide research and other forms of support to OJJDP, assisting it in moving the juvenile justice community forward. These relationships, if reestablished, would help to re-grow the expertise of this critically important office. However, in recent years, many of these very knowledgeable experts and organizations have seemingly been cut out of the grant making process.

OJJDP is in the unique and critically important position of being able to work collaboratively with juvenile justice stakeholders in identifying issues facing juvenile justice systems and formulating nation-wide efforts to address them. However, in order to be able to

carry out these tasks, OJJDP must be in contact with a very diverse group of stakeholders representing the juvenile justice field. That work should have been ongoing over the past eight years. It must certainly be renewed immediately.

Increasing Transparency

As indicated above, a major concern under the current OJJDP leadership is the lack of transparency in how the office carries out its responsibilities. Over the past eight years, information from OJJDP has been difficult to obtain on a wide variety of issues - from which States are utilizing certain exceptions under the JJDPA to OJJDP's current priorities. For example, last year, OJJDP began working on a juvenile justice initiative focusing on the health needs of youth in the juvenile justice system. In partnership with the U.S. Surgeon General's office, OJJDP invited experts for an all-day program on March 9, 2007 to discuss this issue and explore ways to improve the system. Throughout this meeting the Surgeon General expressed concern about the issue and made a commitment to determine ways to better provide health care for youth in the system. However, OJJDP later issued a document stating that health care in juvenile justice facilities was not an issue of concern. This document clearly contradicted both the results of the summit and the Surgeon General's commitment to address this issue.

This lack of transparency also was evident in the most recent OJJDP grant making process, where several highly ranked and long-time, productive OJJDP grant applicants were passed over for lower-ranked applicants without a proven track record. Throughout the process, it was unclear why OJJDP selected lower-ranked applicants and on June 19, 2008, the House Committee on Oversight and Government Reform held an oversight hearing to examine the entire process.

While I understand that the Administrator has a certain amount of discretion in managing OJJDP, I believe it is the Administrator's duty to be candid and clear about the priorities of the office and the criteria being used to distribute taxpayer's dollars through its grant programs. This lack of information, clarity and transparency has made it difficult for OJJDP to effectively engage States, subject matter experts, and other stakeholders, thereby limiting the input they otherwise would provide.

Finally, under the JJDPA, the OJJDP Administrator is required to submit an annual report to Congress. This report must contain annual data on youth involved in the juvenile justice system, as well as how the funds under the Act are being spent, whether the State's plan is in compliance with the Act, and an evaluation of the programs funded under the JJDPA and their effectiveness in reducing the incidence of juvenile delinquency, particularly violent crime, committed by juveniles. However, since 2005, OJJDP has not issued this annual report. The failure of the office to provide this annual "status report" has inhibited the ability of Congress and other interested parties to understand and assess the activities and priorities pursued by OJJDP over the past year.

I strongly encourage the OJJDP Administrator to take immediate and concrete steps to increase the agency's transparency. These steps could include making documents such as JJDPA State plans and OJJDP's grant making documents publicly available on the agency's website. In addition, Congress should conduct oversight to ensure that OJJDP submits its required annual report.

Developing the Juvenile Justice Workforce

The final area of focus I encourage OJJDP to pursue, is the juvenile justice workforce. It is this workforce that carries out the intent of the JJDPA and the work undertaken each day with our youth in the system. It is a group of dedicated, but too frequently poorly supported workers – intake, caseworker, court, probation and parole, detention and correctional facility, as well as legal and judicial staff. This workforce is spread across public and private agencies (private agencies contract with states and localities to carry out the state and local public agencies’ responsibilities).

We have seen a poor track record in the recruitment and retention of this staff, similar to what we have seen in other child serving areas, such as child welfare. They too often are paid too little, inadequately trained, given too few of the tools they need to do their work, poorly supervised and given unreasonably high workloads. Efforts need to be made through the JJDPA to further support and professionalize this workforce. This can be done through adoption of programs that support workforce development in partnership with the states, as is done in child welfare through Title IV-E. This would allow for the development of State agency/university partnerships to be partially federally supported in providing entry level and in service training for juvenile justice staff. It would also allow for recruitment partnerships between state agencies and universities to help identify and support the development of a career track for students interested in working with youth and families involved in the juvenile justice system. This career track would include internship experience and tuition subsidies for any student who commits to work in a juvenile justice agency within the state for a minimum period of time. Time and again we hear from young people in the juvenile justice system who succeed in turning

away from crime, that what made the difference was a connection to a person in the system – a caseworker, probation officer, lawyer, or judge, who had a profound impact on their life. While the juvenile justice system certainly needs to utilize research-based programs and practices, it also needs a strong workforce to implement those programs in order to be successful. This workforce, plagued by heavy workloads and high turnover rates, needs to be better supported to do its life changing work. When we think of the severe problems recently plaguing the juvenile correctional system, e.g. in Texas, California and Indiana, we can better understand how strengthening the workforce is a key strategy to safeguarding our youth.

Summary of Recommendations

In summary, I provide the following recommendations related to the operations of OJJDP:

- Enhance OJJDP’s focus on the implementation of the JJDPA and its core requirements;
- Significantly increase OJJDP’s support to States to come into and stay in compliance with the JJDPA, including the provision of additional training and technical assistance;
- Restore the expertise and capacity of OJJDP to carry out the broad range of tasks it is required to perform;
- Actively engage the wide range of individuals, organizations, and entities with expertise in the juvenile justice field to support OJJDP in establishing its positions and priorities and in carrying out its responsibilities;
- Significantly increase the transparency of OJJDP with the juvenile justice field and the public;

- Take concrete steps to strengthen the juvenile justice workforce so it is better equipped to serve the youth in its care and provide for the public's safety.

The adoption of these recommendations would contribute significantly to strengthening OJJDP and improving our nation's juvenile justice system. The improvements that would flow from them would not only provide much-needed help to youth and families struggling in the system every day, but benefit society as a whole by helping to reduce juvenile delinquency and putting our most challenged and challenging young people on a path to becoming law abiding and contributing members of our society. Ensuring that these recommendations are adopted, therefore, is essential -- and doing so will require strong leadership at OJJDP and oversight from Congress.

Chairman Scott, Ranking Member Gohmert, and Members of the Committee, thank you again for the opportunity to provide input on the operation of this vitally important federal agency. I look forward to working with the Committee through the Center for Juvenile Justice Reform at Georgetown University as your work proceeds.